

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**TRUSTEES OF THE PLUMBERS AND GASFITTERS'
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,
VACATION & XMAS AND FRINGE BENEFIT FUNDS;
PLUMBERS AND GASFITTERS LOCAL 12; AND
PLUMBERS' UNION NO. 12 LABOR MANAGEMENT
COOPERATION TRUST FUND,**

Plaintiffs - Creditors

VS.

McGLONE PLUMBING, INC.

Defendant - Debtor

Civil Action No.
05-CV-11510 (JGD)

August 3, 2006

**DECLARATION OF JOHN T. FUSSELL IN SUPPORT
OF CAPIAS FOR DEBTOR FOR FAILURE TO COMPLY WITH COURT ORDER**

I, John T. Fussell, understanding the meaning of an oath, do hereby declare and state as follows:

1. The law firm of Robert M. Cheverie & Associates, P.C. represents the above-captioned Plaintiffs.
2. I am an attorney at the law firm of Robert M. Cheverie & Associates, P.C. in East Hartford, Connecticut, and represent the above Plaintiffs in this matter.

3. A judgment in favor of Plaintiffs dated January 18, 2006 entered against Defendant on January 25, 2006 and ordered that Plaintiffs recover from Defendant McGlone Plumbing Inc, delinquent Funds contributions in the amount of **\$6,311.64**, late fees in the amount **\$424.51**, costs in the amount of **\$295.18**, and attorneys fees in the amount of **\$1,400.00** for a total judgment of **\$8,431.33**, plus post-judgment interest as provided by law [Doc. 10].

4. By letter dated January 31, 2006 the undersigned forwarded a copy of the Judgment to Daniel T. McGlone, President of McGlone Plumbing, Inc., along with a proposal to resolve the matter by monthly installments. As a settlement incentive, Mr. McGlone was informed that attorneys' fees would be waived, reducing the Judgment obligation by **\$1,400.00** if he agreed to pay the delinquent contributions and late fees by monthly installment payments. In a subsequent telephone discussion, Mr. McGlone stated that he would pay the Judgment as proposed and that he would let me know the number of payments (i.e., six, twelve or eighteen) over which to structure the agreement. Mr. McGlone did not contact this office regarding the payment structure.

5. By letter dated May 19, 2006, the undersigned informed Mr. McGlone that steps would be taken to enforce the Judgment if he did not agree to a settlement payment schedule to resolve the Judgment.

6. Upon Application by the Plaintiffs, the Court issued an Order dated June 22, 2006 Ordering Daniel T. McGlone, President of McGlone Plumbing Inc, to Appear for Supplementary Process Examination on Tuesday, August 1, 2006, at 10:30 A.M. at the U.S. District Court, One Courthouse Way, Courtroom #15, 5th Floor, Boston, MA 02210 [Doc 13].

7. By letter dated June 23, 2006, the undersigned informed Mr. McGlone that the Court allowed the Application for Supplementary Process and, again, requested that Mr. McGlone agree to a settlement of the Judgment. That letter explicitly informed Mr. McGlone that, if he failed to appear at the August 1, 2006 hearing, the Court could issue a *capias* for his arrest and delivery to court.

8. The Order to Appear for Supplementary Process Examination dated June 22, 2006 was served in hand on Mr. McGlone on July 6, 2006 at 1:32 PM by Norfolk County Deputy Sheriff James Triglia.

9. The *Return of Service re Order to Appear for Supplementary Process* was filed with the Court electronically on July 17, 2006 [Doc 15].

10. By electronic notice entered on July 17, 2006 at 2:35 PM, the Court informed that the Supplementary Process Examination has been rescheduled to 3:30 P.M. on 08/01/06 before Magistrate Judge Dein in Courtroom #15, on the 5th Floor and

instructed that counsel for the Plaintiffs notify the Judgment Debtor of the change in time.

11. At approximately 3:00 P.M. on July 17, 2006, the undersigned spoke with Daniel T. McGlone at telephone number (617) 799-8038. Mr. McGlone confirmed that he had been served with the Order to Appear for Supplementary Process and understood that the hearing was scheduled for August 1, 2006 at 10:30 A.M. at the Federal District Court, Courtroom #15, Fifth Floor. I informed him that I had just received electronic notification from the Court that the hearing time was changed from 10:30 A.M. to 3:30 P.M. He acknowledged the change and I informed him that I would send a confirmation letter to that effect.

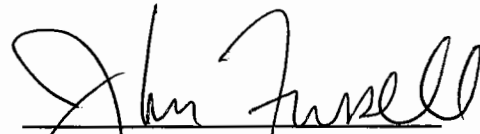
12. By correspondence dated July 17, 2006, sent by first class mail and by facsimile (781) 843-4655 to Daniel T. McGlone, President of McGlone Plumbing, Inc., I confirmed the telephone conversation I had with him referenced above in Paragraph 11 and informed him that the supplementary process hearing had been rescheduled by the Court from 10:30 A.M. to 3:30 P.M. on August 1, 2006 in Courtroom #15 on the 5th Floor of the Federal District Court. I enclosed with that letter the Court's electronic notice dated July 17, 2006 and the Court's original Order dated June 22, 2006. This office maintains in its file the aforementioned correspondence and attachments, along with the facsimile receipt demonstrating a successful transmission of that correspondence and attachment at 15:19 hours on July 17, 2006.

13. Mr. McGlone did not state that he could not attend the hearing at that time and never contacted the undersigned to attempt to reschedule the August 1, 2006 hearing.

14. Daniel T. McGlone is not in Military Service and is not incompetent.

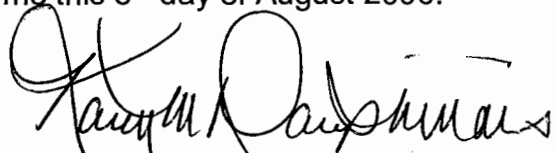
15. On August 2, 2006, I telephoned Mr. McGlone at telephone number (617) 799-8038 and left a voicemail message for him requesting the he call me to discuss settlement and his failure to comply with the Court's Order to appear on August 1, 2006.

DATED this 3rd day of August 2006, at East Hartford, Connecticut.



John T. Fussell, Esq.
ROBERT M. CHEVERIE &
ASSOCIATES, P.C.
Attorneys for the Plaintiffs

SUBSCRIBED and sworn to before me this 3rd day of August 2006.



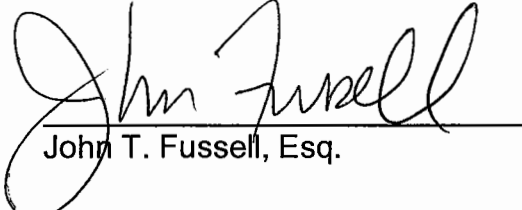
KAREN M. DAUPHINAIS
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2007

Karen M. Dauphinais
Notary Public

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing DECLARATION OF JOHN T. FUSSELL IN SUPPORT OF CAPIAS FOR DEBTOR FOR FAILURE TO COMPLY WITH COURT ORDER has been mailed, first-class and postage prepaid, this 3rd day of August 2006 to the following:

Daniel T. McGlone, President
McGLONE PLUMBING, INC.
111 French Avenue
Braintree, MA 02184



John T. Fussell, Esq.

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